

SEPTEMBER 2012

## IN THIS ISSUE:

Page

- 1 PORNOGRAPHY AND EDUCATORS**
- 2 AUGUST BOARD ACTION**
- 3 YOUR QUESTIONS**
- 3 "SCHOOL TAKES A LOT"**
- 4 RICHERSON V. BECKON (2009)—BLOGGING ABOUT YOUR CO-WORKERS**

Click on the following links to learn more:

UPPAC



**Utah School Law Update** is a publication of the Utah State Office of Education

Law and Legislation  
250 East 500 South  
P.O. Box 144200  
Salt Lake City, UT 84114-4200

Larry K. Shumway, Ed.D., State  
Superintendent of Public Instruction

Phone: 801.538.7830

Fax: 801.538.7729

[william.speigel@schools.utah.gov](mailto:william.speigel@schools.utah.gov)

## PORNOGRAPHY AND EDUCATORS

Pornography. When Heather, the new investigator/ attorney began working with UPPAC, she was told she may have to review a few pornography cases. The other day she jokingly complained that there's nothing "few" about the number of pornography cases she has reviewed in the last few months. Sadly, educators' decisions to view pornographic materials on school computers are a problem. We are confident that these cases represent a very small percentage of total educators, and is not way of the profession as a whole. But even a "few" is a few too many.

So, a few points about pornography on school computers/ equipment:

1. Not only is the practice of viewing pornography on school computers or on school property, a violation of Utah Educator Standards, it is also against the law. Utah Code 76-10-1235 makes it a class A misdemeanor to access pornographic or indecent material on school property. These cases are not often prosecuted, but it could be because administrators and districts do not know to report them to the police. These cases should be reported.
2. We are often asked how educators even access pornography at school with all the firewalls and protections in place by district/ LEA IT. As an investigator, I have learned a few tricks of the trade. For example, many filters will block Google searches, not necessary websites, and if the search is innocuous enough—for example, the name of a female porn star like Bambi or Jasmine—images comes up that are a far cry from the fawn or the heroine in Aladdin. Searches in foreign languages also circumvent many filters. Also, certain websites like Tumblr.com, a short-form blogging platform, provide members access to portals that are otherwise unreachable by typing in the url. One educator reported to me in the course of the investigation, "I wouldn't have had access to these images if the district would have blocked Tumblr like I kept telling them to." Clearly, the educator has some issues with accountability, but if a site can be blocked, it should be.
3. Investigations by UPPAC require evidence that often only the district can preserve. When making the decision to terminate or allow resignation in lieu of termination, school districts and charter schools should not delete all evidence simply because the educator is no longer an employee. UPPAC has had the challenge of investigating cases in which the educator initially admitted to viewing pornography on his computer, resigned, and then later denied it. When UPPAC investigated, the computer formerly in the possession of the educator (where the pornography was allegedly viewed)

(Continued on page 2)

## AUGUST BOARD ACTION

The State Board of Education suspended the license of Louis Wong.

The license of Scott Telford was suspended for returning to school intoxicated from a lunch break.

Donald Kenyon's license was revoked for providing alcohol to minors, engaging in a physical relationship with a female student, and lying about the misconducting when confronted by district personnel.

Court DeSpain's license was suspended for failing to conduct fire drills, falsifying reports regarding the drills, and pressuring an employee to lie about the drills to the district.

(Continued from page 1)

the computer or laptop had been wiped clean by the district or charter school shortly after the educator's resignation. The result: the educator got a slap on the wrist for POTENTIALLY having pornography on his computer, but there was nothing more UPPAC could do about it.

4. Pornography comes in many shapes and sizes: thumbnail images, YouTube videos, chat rooms, and erotic stories, etc., all of them are inappropriate for viewing on school equipment.
5. School equipment means laptops, iPads, and smart phones issued to the educator for his/her professional use. It does not matter for purposes of professionalism and ethics that the viewing occurred off school grounds if it was viewed using a school issued device.
6. It also does not matter WHO viewed the pornography. Educators are charged with responsibility for the devices issued to them. The excuse that "my son" or—better yet "my spouse"—was viewing the material is not an acceptable excuse. The most recent excuse offered during an investigation: "I leave my computer alone in my classroom a lot and students are always in there messing around. It was probably one of my students who accessed the material." The educator taught 4th grade.
7. The current Utah State Board of Education members are very concerned about pornography cases. Convincing a Board that an educator who viewed pornography on school computers should be teaching—even after a lengthy suspension—is an uphill battle. Preventing is better than repenting in this situation.



## UPPAC BY THE NUMBERS

52

New Investigations in 2012

16

Cases that resulted in Suspension or Revocation in 2012

8

Pornography cases this year investigated

5

Cases dismissed this year

11

UPPAC members

33

UPPAC Hearings—January and September 2012

To Get a weekly roundup from our blog, [UtahPublicEducation.org](http://UtahPublicEducation.org), click here:



UtahPublicEducation.org  
The Official Blog of the Utah State Board of Education and the Utah State Office of Education

Utah Education



## YOUR QUESTIONS

**Q:** My high school debate club/team wants to hold a lottery or a raffle to pay some of the Debate Team expenses. Is a lottery gambling? Is it legal? —*Debate Team President*

**A:** A lottery is gambling and is NOT legal under Utah law. Gambling is essentially paying for a *chance* to win something. Having a contest such as you describe to benefit a team or club can be legal **IF**, instead of a selling a chance to win, you sell a small candy bar or a used book (something of value) in exchange for the patron's \$1 or \$5 ticket.

### **\$76-10-1101(2)(a)** Definition of "Gambling":

Means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome:

- (i) is based upon an element of chance; and
- (ii) is in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome.

**Q:** I am the girls' volleyball coach. I would like to encourage my players to pay their volleyball fees with group fundraisers. Can I require all girls to participate? Can I require those who are eligible for fee waivers to participate? —*Coach*

**A:** You probably cannot require all athletes to participate. HOWEVER, if you make serving at the homeless shelter or having a car wash (with some fundraising potential) a spirit building or morale boosting activity and part of the volleyball team experience, a requirement for team membership is probably OK. If students expect to benefit from team fundraising efforts, they can be required to participate. You should be sensitive to individual student situations—some are contributing to their family's income and some may not have transportation to the school or to an activity. For others, a Saturday activity may interfere with their religion.

(Continued on page 4)

## "SCHOOL TAKES A LOT"

I want to be as clever as the [Target TV ad](#): "Teachers, Parents, school is starting and we are not just teaching music (or history or 3<sup>rd</sup> grade), we are also responsible for so many additional things . . ." (put this to catchy music) (1) birth certificates; (2) immunizations; (3) school fees; (4) vision screening, and (5) anti-bullying efforts, to name a few.

Utah law requires that when a student is enrolled for the first time in a particular [Utah] school, the person enrolling the student must provide a copy of the student's **birth certificate** "or other reliable proof" of the student's identity and age, together with a sworn statement explaining the inability to produce a copy of the birth certificate (if the birth certificate is not provided). This must be produced within 30 days, or the school has the duty to report the situation to law enforcement or the Division of Child and Family Services—following notice to the enrolling person that this referral will be made. Schools expect and learn much from the birth certificate: (1) the student must be 5 by September 1; (2) the person enrolling the student must have a legal relationship to the student and be a Utah resident; (3) schools learn who should be the emergency contact(s) for the student.

**Immunizations:** Utah law requires a school to "retain official certificates of immunization" for every enrolled student. The required immunizations are determined by the State Health Department. This information is readily available from the State or local health departments. A student who has not had (or cannot prove that she has had) at least one dose of required immunizations **shall be** excluded from school—following 5 days' notice to the responsible adult. Parents have the right to seek a *personal belief exemption* for their children from required immunizations. Note, however, that if there is a measles or a mumps outbreak, all non-immunized students *and staff* will be excluded from school.

**School fees:** Elementary schools, per the Utah Constitution, must be free. Fees cannot be charged for regular school day programs, activities, or classes in grades K-6. Teachers may ask for donations—using express language now provided in Utah law—from parents of elementary students. Fees may be charged for secondary programs, classes, supplies or activities. The fees must be approved annually by local boards of education and they must be waived for students whose families qualify for fee waivers. Information about fees and the availability of waivers must be provided annually to parents and families. Also, consistent with Utah law, families must provide *documentation* of eligibility for fee waivers. The confidentiality of students' fee-waiver status should be carefully protected.

**Vision screening:** Students younger than 8 entering school for the first time must provide proof of vision screening. A school district, in concert with the health department, may provide free vision screening services in the school for children 3 ½ through 8 years old. Reporting forms (provided by health department) documenting vision screening activities and students identified through screening are required by law. Again, parents may seek personal exemptions.

**Anti-bullying efforts:** All children of all ages, ethnicities, abilities, and beliefs should feel safe at school. Unfortunately, problems, discrimination and hatefulness that start in homes, neighborhoods and communities find their way into schools. Teachers are both trained and are required to use best efforts to encourage students to get along with each other or at least treat others with civility. We must protect

(Continued on page 4)





**Q:** As a high school teacher, I object to participating in the (now required daily) Pledge of Allegiance. Must I participate? —  
*Otherwise Patriotic*  
8<sup>th</sup> grade teacher



**A:** A small number of lower courts have addressed this question—and most find in favor of the teacher. Of course a teacher must show respect while the Pledge is said, but you would probably not be required to participate, if you were quiet about your non-participation and respectful of the process. Most people who refuse to participate in the Pledge at public events do so for religious reasons.

4 Most courts support a teacher's right to exercise her religion even during her employment time so long as the teacher's beliefs do not distract from the school program and her religious (or non-religious) "statement" is discrete.

**Q:** I am a 3<sup>rd</sup> grade teacher and I do not believe in required immunizations. Must I show proof of immunizations in order to be a teacher? —*Teacher*

**A:** If you have a religious or conscientiously held belief against immunizations, you can probably refuse to be immunized. [Keep in mind, if you are applying for teaching jobs and the school/district where you are applying has had problems in previous years with teachers without immunizations being excluded from school during a measles or rubella outbreak, a school may ask about your willingness to follow all health-related mandates of the district (or similar language).] A job could depend on your willingness. Also, if there is an outbreak of whooping cough (or another disease for which you could have been immunized), you will be excluded from school, along with all students without immunizations, and you would certainly disrupt the school's schedule and could, perhaps, be excluded without pay.

and support the younger, smaller, quirkier students. Currently, consistent with state law and Sate Board of Education rules, parents, school employees and students are directed to have anti-bullying training annually. Some school districts have decided to have students view the recent movie, "BULLY." Though the language may be direct, the images troubling and the subject matter mature, everyone acknowledges that strong actions are warranted:

Filmed over the course of the 2009/2010 school year, BULLY opens a window onto the pained and often endangered lives of bullied kids, revealing a problem that transcends geographic, racial, ethnic and economic borders. It documents the responses of teachers and administrators to aggressive behaviors that defy "kids will be kids" clichés, and it captures a growing movement among parents and youths to change how bullying is handled in schools, in communities and in society as a whole. (The Salt Lake Tribune, Sept. 17, 2012)

Public schools provide wonderful, enlightening and meaningful opportunities for young people to learn with and from other children. Schools are also so much more!

## ***RICHERSON V. BECKON (2009)—BLOGGING ABOUT YOUR CO-WORKERS***

Tara Richerson was a instructional coach and curriculum specialist in a Washington school where a trusting mentor relationship with other less-experience teachers was crucial. She was expected to give honest, crucial, and private feedback about those assigned to her. Tara also had a public blog where she made several highly personal and "vituperative comments" about employees and fellow teachers. Because of the blog, one of her co-workers refused to work with her. The HR director, Mr. Beckon, transferred Ms. Richerson into a teaching assignment when Beckon realized that Richerson's colleagues had trust issues with her.

Using an older and familiar case, *Pickering v. Board of Education* (1967), the 9<sup>th</sup> Circuit Court balanced Richerson's right to speak on issues of public concern against several factors, including whether Richerson's speech disrupted co-worker relations or interfered with the speaker's performance of her duties. The 9<sup>th</sup> Circuit Court found that Richerson's former position required other less-experienced employees to trust Richerson—which they were unlikely to do after reading her blog. The lower court found that Richerson's interest in expressing herself freely did not outweigh the school district's interest in having mentors and those in training maintain confidential, trusting relationships with each other. The 9<sup>th</sup> Circuit affirmed the lower court's judgment, upholding Beckon's transfer of Richerson from a coach and specialist to a classroom teacher.

## **WHAT IS UPPAC?**

*UPPAC is a committee of nine educators and two community members charged with maintain and promoting a high standard of professional conduct and ethics among Utah teachers. It is advisory to the Utah State Board of Education in making recommendations regarding educator licensing and may take appropriate disciplinary action regarding educator misconduct.*

*The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.*

*Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the State Office.*